

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:10-cv-00095-W**

JAMES FOSTER,

Plaintiff,

vs.

CEVA FREIGHT, LLC, LP,

Defendant.

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ORDER

THIS MATTER is before the Court following the parties' submission of a proposed Notice to potential class members (Doc. No. 48) pursuant to this Court's order dated January 31, 2011 (Doc. No. 47). After reviewing the proposed Notice, which was submitted jointly by the parties, the Court finds that it satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2)(B). The Notice fairly and adequately states concisely and clearly in plain, easily understood terms: (1) the nature of the action; (2) the definition of the class; (3) the claims, issues and defenses to be litigated; (4) that a class member may enter an appearance through an attorney if the member so desires; (5) that the Court will exclude from the class any member who requests exclusion; (6) the time and manner for requesting exclusion (within "60 days from the date the notices are sent"); and (7) the binding effect of a class judgment on members under Rule 23(c)(3).

In order to provide a date certain for trial to begin in this matter, this Court hereby sua sponte continues trial from the September 12, 2011, setting and respectfully DIRECTS the Clerk to put this matter on for trial on this Court's mixed term beginning March 12, 2012. Class Counsel shall

modify the Notice accordingly.¹ Subject to this modification, the Court finds that the proposed Notice shall be APPROVED.

The Court directs that Class Counsel shall, within thirty (30) days after entry of this Order, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be mailed, by first-class mail, postage prepaid to the last known address of each such Person within the Class who can be identified by reasonable effort. Defendant shall provide Class Counsel with the names and last known addresses of the potential Class Members, which names and addresses shall be used solely for the purpose of providing notice of this Settlement and for no other purpose. Class Counsel shall file with the Court a proof of timely compliance with the foregoing mailing requirements.

Also before the Court is Plaintiffs' Motion to Extend the Pretrial Schedule to Account for Class Certification Opt-Out Period (Doc. No. 52). The Court finds that Plaintiffs have shown good cause to justify such an extension, and the Motion is GRANTED.

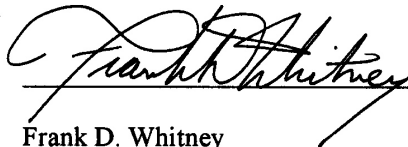
IT IS HEREBY ORDERED that the pretrial schedule is modified so that discovery is reopened and may continue through the "opt-out" period during which class members have the right to opt out of this case's certified class. Discovery must be served so that all responses are due by the final day of the opt-out period. At that time, should the parties find that the pending motion for summary judgment (Doc. No. 50) and/or response thereto needs to be supplemented, the Court will entertain a motion for additional briefing at that time.

¹ The Court also directs the parties to correct typographical errors, including, but not limited to, the removal of the additional period at the end of the sentence in question five on page four and to add a period at the end of the last sentence in question twelve on page five.

In sum, the parties' jointly-submitted Notice (Doc. No. 48) is approved and shall be issued in accordance with the provisions set forth herein. Plaintiff's Motion for Extension of Time (Doc. No. 52) is GRANTED. The CLERK is respectfully directed to continue this case from the September trial setting to the March 12, 2012, calendar.

IT IS SO ORDERED.

Signed: May 26, 2011


Frank D. Whitney
United States District Judge

